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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 26, 1998

Magalie R. Salas, Esquire
Secretary
Federal Communications Commission
Room 222, 1919 M Street, N.W.
Washington, D.C. 20554

Re: The Pikes Peak Broadcasting Company
MM Docket No. 87-268

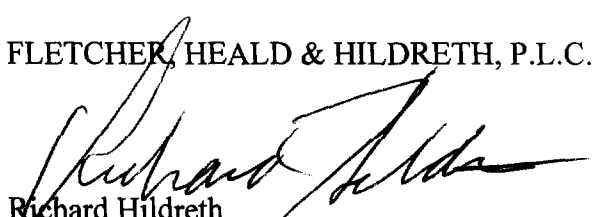
Dear Ms. Salas:

Transmitted herewith on behalf of The Pikes Peak Broadcasting Company is an original and four copies of its Reply to Motion to Strike in the above-referenced matter.

Should any additional information be required, please contact this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH, P.L.C.


Richard Hildreth

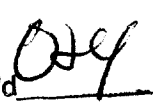
Counsel for The Pikes Peak Broadcasting Company

RH/bl

Enclosures

cc: Certificate of Service (w/enc.)

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BEFORE THE

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Federal Communications Commission

WASHINGTON, D.C. 20554

In the matter of)
)
Advanced Television Systems and) MM Docket No. 87-268
Their Impact Upon the Existing)
Television Broadcast Service)

Directed to: The Commission

REPLY TO MOTION TO STRIKE

The Pikes Peak Broadcasting Company ("Pikes Peak"), by its attorney respectfully responds to, and opposes, the "Motion to Strike" ("Motion") filed in the above-referenced proceeding by The University of Southern Colorado ("University"), licensee of Station KTSC, Channel 8, Pueblo, Colorado ("KTSC") and requests that the same be dismissed or denied. With respect thereto, the following is presented:

The so-called Motion referred to above is, in fact, an opposition. As such, it is untimely inasmuch as the pleading to which it is directed was filed with the Commission on December 17, 1997. A reply to that pleading was due to be filed with the Commission on or before December 30, 1997. The said motion was not filed with the Commission until January 16, 1998. As such, it is grossly untimely (47 C.F.R. 1.45).¹

The said Motion alleges that the submission by Pikes Peak should have been made earlier. However, Pikes Peak did, indeed, file comments and submitted those to the Commission

¹ With University's insistence on timeliness discussed in Part I of its motion, it must be held to the same standard.

on November 25, 1996, pointing out that the original DTV allocation for University's station which was for Channel 23 would cause interference to Pikes Peak's DTV allocation for KRDO-TV, which was for Channel 24 and that the wrong site coordinates had been used. For whatever reason, the Commission made the change in the DTV channel allocation to University discussed in the Pikes Peak comments but did not correct the KTSC coordinates to reflect the transmitter site from which it intended to operate. Ignored was the fact that the proper coordinates for KTSC that necessarily had to be used in the DTV allocation were north latitude 38 degrees 22 minutes 24 seconds, west longitude 104 degrees 33 minutes and 27 seconds. The difference is important since one site is for Baculite Mesa and the other for Cheyenne Mountain which are separated by approximately 30 miles. In the *Sixth Report and Order* released April 21, 1997 MM Docket 87-268, FCC 97-115, the Commission stated at paragraph 102 that the allocation of DTV channels would be at sites within three miles of the existing site. Here the "existing site" of KTSC is at the coordinates stated above which is located on Baculite Mesa and not at Cheyenne Mountain, over 30 miles away.

In spite of its error, the Commission has continued to use the coordinates of the KTSC construction permit for Cheyenne Mountain which was granted on February 28, 1991 (BPET-900122KE), but which has never been built.² Indeed, KTSC has made it quite clear that it has no

² University has not shown that any construction whatsoever has taken place in the almost seven years since it was as granted on February 28, 1991. While University agreed to join in the scheme of Sangre de Cristo Communications, Inc. ("SCC") to an exchange of KTSC Channel 8 with SCC's Channel 5 to allow SCC to essentially change its operation from Pueblo, its city of license, to Colorado Springs, by using the KTSC construction permit for Cheyenne Mountain, a proposal that has been denied by the Commission and is now on appeal, that scheme cannot be used as an excuse not to construct. See *Notice of Proposed Rule Making* in RM-8088, FCC Rcd 4572 at footnote 4.

intention to build at Cheyenne Mountain and doesn't have the financial ability to do so in any event. This was explored in detail in the Petition to Revoke and Deny CP Extension, filed by Pikes Peak on February 19, 1993, the Supplement to Petition to Revoke and Deny CP Extension, filed April 7, 1993, and in the Further Supplement to Petition to Revoke and Deny CP Extension, filed May 10, 1993.³ It is therefore a gross error to continue utilizing the coordinates of a transmitter site under a CP which has been abandoned by University. Station KTSC is fully operational at the Baculite Mesa site and it is the coordinates for that site. Those coordinates are the only ones that should be specified. Moreover, as set forth in the comments of Pikes Peak, filed in the instant proceeding, that channel should be changed from Channel 29 to Channel 46 to avoid adjacent channel interference.

It is quite clear that the comments of Pikes Peak are a continuation of the comments it made in April 1996. The most recent filing became necessary when, as a result of the MST filing, it was realized that the problem with the KTSC DTV allocation as to both the channel and the site had not been corrected.

It is patently ridiculous for KTSC to continue to make charges against Pikes Peak when it is University that is seeking to mislead the Commission. It has no financing and has told NTIA that it won't proceed. It has no transmitter site and does not claim otherwise. Not to be ignored is the fact that this information has only been presented to the Commission by the efforts of The Pikes Peak Broadcasting Company and KKTV, Inc. Pikes Peak even had to file an FOIA request with NTIA in order to garner many of the true facts. Surely if University had the ability to construct and operate KTSC at Cheyenne Mountain, it would have been able to present such

³ Those pleadings and the responses thereto are incorporated herein by reference.

information over the almost seven years that the construction permit has been in existence (and not extended). Even though the *bona fides* of University have been questioned, University has been incapable of responding with facts and certainly not responding with facts that would demonstrate that it has been, and is now, ready, willing, and able, to construct and operate the facility at Cheyenne Mountain. Thus, to continue the claim that the construction permit of KTSC is valid or viable is a bit fraudulent. The only reason that University has "hung in there" is a continuation of its efforts to try to get a few bucks out of SCC. For its part, SCC has unabashedly stated that it does not want anything to do with University and KTSC unless it involves the Cheyenne Mountain transmitter site. No site -- no bucks. What the Commission has before it is the correction in the coordinates of the DTV allocation that has been made to University and a change in that channel to avoid interference with KRDO-TV. It makes no sense to continue the charade that assumes University has a valid construction permit for KTSC at Cheyenne Mountain, which it clearly does not. Indeed, University has left no doubt that it has no intention of constructing in accordance with the permit.

Wherefore, the premises considered, it is respectfully requested that the Commission deny or dismiss the "Motion to Strike" filed by The University of Southern Colorado in this preceding and that the Commission fully consider the instant opposition in its evaluation of the said Motion to Strike and in the matter of the allocation of the DTV allocation for Station KTSC, Pueblo, to specify an operation on Channel 48 and at the present coordinates of Station KTSC on Baculite Mesa, namely north latitude 38 degrees 22 minutes 24 seconds, west longitude 104 degrees 33 minutes and 27 seconds.

Respectfully submitted,

THE PIKES PEAK BROADCASTING COMPANY

By: 

Richard Hildreth

Its Attorney

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January 26, 1998

rh23/pikepeak.opp

CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 26th day of January 1998, a copy of the foregoing *Reply to Motion to Strike* was sent via first-class mail, postage pre-paid, to the following:

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Mr. Michael Powell*
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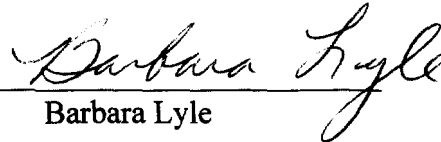
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**By Hand-Delivery*